

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Timothy & Francine Farver,
Petitioner-Appellant,

v.

Jasper County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 10-50-0081
Parcel No. 08.35.251.027

On May 6, 2011, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The appellants, Timothy and Francine Farver, were self-represented and requested the appeal take place by telephone. The Jasper County Board of Review designated County Attorney Michael K. Jacobsen as its representative and also participated at hearing. The Appeal Board now having examined the entire record, having heard the testimony, and being fully advised, finds:

Findings of Fact

Timothy and Francine Farver, owners of property located at 2003 A 1 Avenuc E, Newton, Iowa, appeals from the Jasper County Board of Review decision reassessing their property. The real estate was classified commercial for the January 1, 2010, assessment and valued at \$32,950. This was a new assessment for 2010.

Farvers protested to the Board of Review on the grounds that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(b); that there is an error in the assessment; and that there has been a change downward in the value since the last assessment under sections 441.37(1) and 441.35(3). In response to the protest, the Board of Review notified Farvers the January 1, 2010, assessment would not change, stating in part, "The Board determined the property is

not assessed for more than market. The property owner failed on all grounds to prove value was wrong.”

Farvers then appealed to this Board again asserting the same grounds. We note that since the 2010 assessment was new, the claim downward change in value is “akin” to the ground that the property is assessed for more than authorized by law. *See Dedham Coop. Ass’n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Farvers value the property at \$17,453 and seek \$15,497 in relief.

The subject property consists of land only, and is identified as Block A Morgan’s Acres, Lot 5. The site consists of 0.49 acres.

Farver testified that he purchased both lot 4 and lot 5 which was a total of 1.05 acres. Lot 4 fronts 1st Avenue and lot 5 is the rear portion of the lot and well off 1st Avenue. Farver stated that he was required to construct a pond on the west side of the subject property.

Farver provided data that indicated prime land with frontage is worth \$1.95 per square foot and rear land is \$0.97 per square foot. This would indicate a value for the subject property of \$21,963. Farver stated his commercial real estate broker indicates the parcels’ value would be \$22,017, if the whole remaining east side of the parcel was usable. Farver is of the opinion only 50% of the parcel is usable and makes a 50% adjustment to the value, which would result in a value of approximately \$11,000.

John Deegan, Jasper County Assessor, testified that at the time he assessed the subject property, he did not know of the requirement for the detention pond. Deegan stated he has not reviewed the site since the appeal. However, given the evidence and testimony presented by Farver, he concurred that an adjustment should be made and that he would not have a problem going 50%.

Reviewing all the evidence, we find the preponderance of evidence supports Farvers’ contention that the property is over-assessed. The best evidence is Assessor Deegan’s testimony that

the property should be adjusted for the detention pond. Deegan conceded that Farver's estimate of a 50% reduction, due to the limited use of the site, was reasonable. Farver requested to this Board that the subject property be assessed at \$17,453. We note that one-half of the \$32,950 assessment would be \$16,475. Therefore, we determined that the January 1, 2010, assessment is \$17,453 as requested, which is slightly less than the 50% adjustment mentioned by Farver and conceded by Deegan. Both parties were given the option to review the property following the hearing to determine if the adjustment was correct and what the actual value should be; however, we received no response from them.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determined anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.* 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If

sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2).

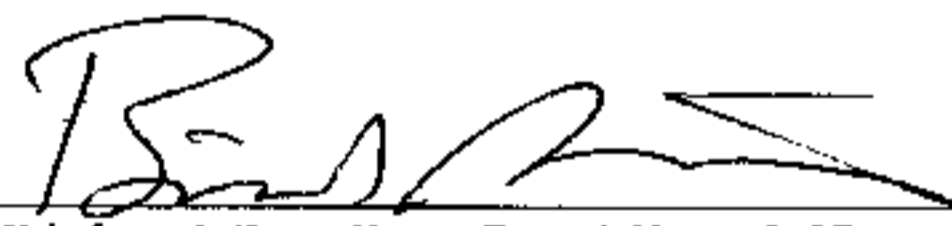
The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). We determine the record shows the property is over-assessed given its lack of "prime" frontage and more particularly due to the requirement for a detention pond (occupying approximately half the lot) on the property.

THE APPEAL BOARD ORDERS that the January 1, 2010, assessment of the Farver property located in Newton, Iowa, as determined by the Jasper County Board of Review is modified to \$17,453.

The Secretary of the State of Iowa Property Assessment appeal Board shall mail a copy of this Order to the Dallas County Auditor and all tax records, assessment books and other records pertaining to the assessment referenced herein on the subject parcel shall be corrected accordingly.

Dated this 15 day of July 2011.


Richard Stradley, Presiding Officer


Jacqueline Rypma, Board Member


Karen Oberman, Board Member

Copies to:

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>7-15</u> , 2011.	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	